

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALI J. NAINI,

Plaintiff,

v.

KING COUNTY HOSPITAL DISTRICT NO.
2 d/b/a EVERGREEN HOSPITAL MEDICAL
CENTER *et al.*,

Defendants.

CASE NO. C19-0886-JCC

ORDER

This matter comes before the Court on Defendants' motion to dismiss certain claims (Dkt. No. 104). Having considered the parties' briefing and the relevant record, the Court hereby GRANTS the motion in part and DENIES the motion in part for the reasons explained herein.

I. BACKGROUND

The Court previously laid out the allegations in Plaintiff's third amended complaint and will not repeat those allegations here. (*See* Dkt. No. 79 at 1–4.) On October 18, 2019, the Court dismissed some of Plaintiff's claims. (*See generally id.*) Four of those claims are relevant to the instant motion.

The first two were Plaintiff's 42 U.S.C. §§ 1983 and 1985 claims against Defendant King County Hospital District No. 2 ("Evergreen") and the individual Defendants in their official capacities. (*Id.* at 17.) The Court dismissed those claims because Plaintiff failed to allege facts

1 showing that Evergreen’s Board of Commissioners ratified the decision to not renew his hospital
2 privileges. (*Id.* at 16–17 & n.5.) However, the Court recognized that there was uncertainty as to
3 whether Plaintiff was pleading that the Board ratified the decision. (*Id.* at 17.) Accordingly, the
4 Court granted Plaintiff leave to amend his complaint to allege that the Board ratified the decision
5 to not renew his privileges. (*Id.*)

6 The other relevant claims were Plaintiff’s defamation and false light claims. (*Id.* at 14.)
7 The Court dismissed those claims because Plaintiff alleged communications that were either
8 privileged or related to peer-review and therefore barred by Wash Rev. Code § 7.71.030. (*Id.* at
9 13–14.) But the Court recognized that certain statements about Plaintiff were unlikely to be
10 privileged or related to peer-review. (*Id.* at 14.) Consequently, the Court granted Plaintiff leave
11 to amend his complaint to allege such statements. (*Id.*) The precise wording of the Court’s order
12 was as follows:

13 Plaintiff could cure the deficiencies in [his defamation] claim by alleging facts
14 establishing that Defendants made non-privileged, defamatory statements after
15 Defendants’ announcement that Plaintiff no longer had hospital privileges. The
16 Court therefore GRANTS Plaintiff leave to amend his complaint to allege, if he
17 can, that Defendants made such statements.

18 *iii. False Light*

19 Plaintiff’s false light claim suffers from the same deficiencies as his defamation
20 claim. Consequently, the Court DISMISSES Plaintiff’s false light claim. The Court
21 also GRANTS Plaintiff leave to amend his complaint to allege, if he can, that
22 Defendants made actionable statements after Defendants sent the broadcast email.

23 (*Id.*)

24 On November 13, 2019, Plaintiff filed his fourth amended complaint. (Dkt. No. 98.) In
25 that complaint, Plaintiff renews his §§ 1983 and 1985 claims against Evergreen. (*Id.* at 49–51.)
26 In doing so, Plaintiff alleges that the Board “ratified the decision to remove [Plaintiff] from the
medical staff,” that the Quality Peer Review Committee (“QPRC”) acknowledged the Board’s
action, and that Defendant Dr. James O’Callaghan informed Plaintiff of what the Board had
done. (*Id.* at 39–40, 49.) Plaintiff also renews his defamation and false light claims, alleging that

1 Defendant Dr. Melissa Lee made several defamatory and misleading statements prior to
2 Evergreen suspending Plaintiff's privileges. (*Id.* at 45–47.) Defendants now move to dismiss
3 Plaintiff's renewed defamation and false light claims and his renewed §§ 1983 and 1985 claims
4 against Evergreen and the individual Defendants in their official capacities.¹ (Dkt. No. 104 at 2.)
5 Defendants also move for sanctions under Federal Rule of Civil Procedure 11. (*Id.* at 10–12.)

6 **II. DISCUSSION**

7 **A. Legal Standard**

8 A defendant may move for dismissal when a plaintiff “fails to state a claim upon which
9 relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must
10 contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its
11 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility when the
12 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
13 defendant is liable for the misconduct alleged. *Id.* at 678. Although the court must accept as true
14 a complaint's well-pleaded facts, conclusory allegations of law and unwarranted inferences will
15 not defeat an otherwise proper Rule 12(b)(6) motion. *Vasquez v. Los Angeles County*, 487 F.3d
16 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.
17 2001). The plaintiff is obligated to provide grounds for their entitlement to relief that amount to
18 more than labels and conclusions or a formulaic recitation of the elements of a cause of action.
19 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). “[T]he pleading standard Rule 8
20 announces does not require ‘detailed factual allegations,’ but it demands more than an
21 unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. Dismissal
22 under Rule 12(b)(6) “can [also] be based on the lack of a cognizable legal theory.” *Balistreri v.*

23 ¹ In addition, Defendants move to dismiss all claims against Defendant EvergreenHealth Medical
24 Center Medical Staff. Plaintiff included those claims because Plaintiff's motion for
25 reconsideration was pending when he filed his fourth amended complaint. (Dkt. No. 108 at 25
26 n.4.) Plaintiff acknowledges that following the Court's denial of his motion for reconsideration,
his claims against the Medical Staff should be dismissed. (*See id.*) Accordingly, the Court
DISMISSES with prejudice all claims against the Medical Staff.

1 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

2 When assessing the sufficiency of a complaint under Rule 12(b)(6), the court ordinarily
3 must not consider material outside of the pleadings. *Lee v. City of Los Angeles*, 250 F.3d 668,
4 688 (9th Cir. 2001). There are two exceptions to this rule. First, the incorporation-by-reference
5 doctrine allows the court to “consider evidence on which the ‘complaint “necessarily relies” if:
6 (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and
7 (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion.” *Daniels-*
8 *Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 988 (9th Cir. 2010) (quoting *Marder v. Lopez*, 450 F.3d
9 445, 448 (9th Cir. 2006)). Second, the court is permitted to take judicial notice of facts that are
10 “not subject to reasonable dispute.” Fed. R. Evid. 201(b). A fact is not subject to reasonable
11 dispute if it “can be accurately and readily determined from sources whose accuracy cannot
12 reasonably be questioned.” *Id.*

13 **B. Plaintiff’s §§ 1983 and 1985 Claims**

14 Defendants argue that the Court should dismiss Plaintiff’s §§ 1983 and 1985 claims and
15 impose Rule 11 sanctions for two reasons. First, Defendants argue that “Plaintiff has not pleaded
16 that the Evergreen Board voted upon or otherwise ratified the recommendation not to renew
17 [Plaintiff’s] privileges through any official action.” (Dkt. No. 104 at 12.) Second, Defendants
18 contend that even if Plaintiff pleaded that the Board ratified the decision to not renew his
19 privileges, a “minimal factual inquiry would disprove” the allegation.² (*See id.*) (quoting
20 *Chaudhry v. Gallerizzo*, 174 F.3d 394, 410–11 (4th Cir. 1999)).

21 The first argument is simply incorrect. On page 49 of the fourth amended complaint,
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23 ² Defendants also ask the Court to dismiss Plaintiff’s claims against the individual Defendants in
24 their official capacities. (Dkt. No. 104 at 11 n.3.) The Court previously held that the individual
25 Defendants’ actions do not render Evergreen liable under §§ 1983 or 1985. (*See* Dkt. No. 79 at
26 16–17 & n.5.) The fourth amended complaint does not allege new acts taken by the individual
Defendants that are relevant to Plaintiff’s §§ 1983 or 1985 claims. (*See* Dkt No. 98 at 47–51.)
Consequently, the Court DISMISSES without prejudice Plaintiff’s §§ 1983 and 1985 claims
against the individual Defendants in their official capacities.

1 Plaintiff states, “On January 15, 2019, the Evergreen Hospital Board of Commissioners, which
2 has final policymaking authority over the hospital and final authority over privileging decisions
3 and medical staff appointments, ratified the decision to remove [Plaintiff] from the medical
4 staff.” (Dkt. No. 98 at 49.) Thus, Plaintiff’s complaint does not, as Defendants claim, “dance
5 around this issue,” (Dkt. No. 104 at 12); it addresses the issue head on and affirmatively alleges
6 that the Board ratified the decision to not renew Plaintiff’s privileges.

7 The second argument overstates the strength of Defendants’ evidence that Plaintiff “must
8 have known” that the Board never took a final policy action. *See Truesdell v. S. Cal. Permanente*
9 *Med. Grp.*, 239 F.3d 1146, 1154 (9th Cir. 2002). That evidence consists of three pieces: (1) the
10 declaration of Frederick Allison DeYoung, Chairman of the Board, stating that the Board did not
11 take any action with respect to Plaintiff’s privileges, (*see* Dkt. No. 81 at 2–3); (2) the deposition
12 testimony of Dr. O’Callaghan claiming that the Board did not make a final decision, (*see* Dkt.
13 No. 82-3 at 7–8); and (3) Plaintiff’s deposition testimony observing that the Board “did not
14 approve *it*,” (*see* Dkt. No. 82-41 at 4) (emphasis added).³ These pieces of evidence do not
15 conclusively disprove Plaintiff’s allegation that the Board ratified the decision to not renew his
16 privileges. The first two are self-serving statements made by Evergreen employees—statements
17 that Plaintiff plausibly alleges are false. (*See* Dkt. No. 98 at 39–40.) The third is a cherry-picked
18 quote in which Plaintiff states that an email falsely claimed that the Board approved his
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20 ³ Defendants also cite to several of Plaintiff’s interrogatory responses in an attempt to show that
21 he admitted that the Board did not approve the decision to not renew his privileges. (*See* Dkt No.
22 104 at 12) (citing Dkt. No. 82-9 at 4–5, 8, 14). However, as Plaintiff correctly points out in his
23 response, none of the cited pages support Defendants’ argument. (*See* Dkt. No. 108 at 15–17.)
24 On pages four through five of his interrogatory responses, Plaintiff summarizes but does not
25 endorse Dr. O’Callaghan’s testimony that the Board did not make a final decision. (*See* Dkt. No.
26 82-9 at 4–5.) On page eight, Plaintiff states that either the Board violated Evergreen’s bylaws by
revoking his privileges without a hearing or Dr. O’Callaghan lied when he told Plaintiff that
Plaintiff’s privileges had been terminated. (*Id.* at 5.) And on page 15, Plaintiff states that
Evergreen violated his due process rights when he “was barred from Evergreen
Hospital . . . based on the Board of Commissioners’ supposed ‘final action’ to terminate his
privileges.” (*Id.* at 15.) Defendants’ citation to these responses verges on being misleading.

1 resignation. (*See* Dkt. No. 82-41 at 4.)

2 The second argument also ignores the plausible allegations in Plaintiff’s fourth amended
3 complaint. According to those allegations, the Board took adverse action against Plaintiff’s
4 privileges on January 15, 2019. (Dkt. No. 98 at 39.) One day later, the QPRC purportedly
5 acknowledged that Plaintiff was “no longer on staff,” which one would expect if the Board had
6 just taken final action to not renew his privileges. (*Id.*) The next day, Dr. O’Callaghan allegedly
7 told Plaintiff that the Board had approved the recommendation to not renew Plaintiff’s
8 privileges—again as one would expect. (*Id.* at 39–40.) And that same day, Evergreen’s medical
9 staff coordinator apparently sent an email containing the subject line “Board Approvals” and
10 stating Plaintiff was “no longer on staff.” (*Id.*) Defendants do not deny that the events following
11 the January 15 Board meeting occurred; Defendants simply offer alternative explanations for
12 why they occurred. (*See* Dkt. No. 104 at 10–12.) While a jury might ultimately believe
13 Defendants’ explanations, it would be inappropriate to dismiss Plaintiff’s plausible §§ 1983 and
14 1985 claims under Rule 12(b)(6). The Court therefore DENIES Defendants’ motion to dismiss
15 Plaintiff’s §§ 1983 and 1985 claims against Evergreen. And because those claims have
16 evidentiary support, the Court also DENIES Defendants’ request for Rule 11 sanctions. *See* Fed.
17 R. Civ. P. 11(b)(3); *Chaudhry*, 174 F.3d at 410–11.

18 **C. Plaintiff’s Defamation and False Light Claims**

19 Defendants ask the Court to dismiss Plaintiff’s defamation and false light claims because
20 Plaintiff’s fourth amended complaint does not comply with the Court’s October 18, 2019 order.
21 (Dkt. No. 104 at 6.) That order granted Plaintiff leave to amend his complaint to allege, if he
22 could, that “Defendants made actionable statements after Defendants sent the broadcast email.”
23 (*See* Dkt. No. 79 at 14.) Plaintiff’s fourth amended complaint does not allege that Defendants
24 made such statements. (*See* Dkt. No. 98 at 45–47.) Instead, it alleges that Dr. Lee made a series
25 of statements prior to 2018 defaming Plaintiff and portraying him in a false and misleading
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1 light.⁴ (*See id.*) Those statements fall outside of the plain text of the Court’s October 18, 2019
2 order. (*See* Dkt. No. 49 at 14.) Plaintiff therefore lacked permission to amend his complaint to
3 bring defamation and false light claims based on those statements. Accordingly, the Court
4 DISMISSES without prejudice Plaintiff’s defamation and false light claims.

5 Plaintiff may, of course, seek the Court’s leave to amend his complaint. *See* Fed. R. Civ.
6 P. 15(a)(2), 16(b)(4). But to do so, Plaintiff must file a motion. *See* Fed. R. Civ. P. 7(b)(1). Any
7 such motion must explain why there is “good cause” to allow an amendment now that the
8 deadline for pleading amendments has passed. *See* Fed. R. Civ. P. 16(b)(4); *Johnson v.*
9 *Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992); (Dkt. No. 25) (requiring pleading
10 amendments to be filed by October 4, 2019).

11 **III. CONCLUSION**

12 For the foregoing reasons, the Court DENIES Defendants’ motion to dismiss Plaintiff’s
13 §§ 1983 and 1985 claims against Evergreen; DENIES Defendants’ request for Rule 11 sanctions;
14 DISMISSES without prejudice Plaintiff’s §§ 1983 and 1985 claims against the individual
15 Defendants in their official capacities; DISMISSES with prejudice Plaintiff’s defamation and
16 false light claims based on Defendants’ “resignation” email; DISMISSES without prejudice
17 Plaintiff’s other defamation and false light claims; and DISMISSES with prejudice all of
18 Plaintiff’s claims against the Medical Staff.

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23 ⁴ Plaintiff’s fourth amended complaint also includes Defendants’ “resignation” email as a basis
24 for his defamation and false light claims. (Dkt. No. 98 at 46.) Plaintiff explains that he included
25 the resignation email in his fourth amended complaint because his motion for reconsideration
26 was pending when he filed the complaint. (Dkt. No. 108 at 25.) Plaintiff recognizes that the
Court’s ruling on his motion for reconsideration forecloses defamation and false light claims
based on the email. (*Id.*) The Court therefore DISMISSES with prejudice Plaintiff’s defamation
and false light claims based on the email.

1 DATED this 3rd day of January 2020.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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